[President.]

ഒരു മെഡിക്കൽ കമ്മിറ്റി ഏർപ്പെടുത്തുന്നപക്ഷം ഈ സംഗതികളിൽ വേണ്ട അന്വേഷണം നടത്താവുന്നതാണ്. വൈദ്യസഹായം അത്യാവശ്യപ്പെട്ട സ്ഥലങ്ങളിൽ ആശുപത്രികൾ ഏർപ്പെടുത്താൻ സാധിക്കുന്നതാണ്.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I have nothing to say against that; but what I want to know is whether that question is covered by this resolution.

PRESIDENT: It is a very important matter, but it is not covered by this resolution. If Mr. Nidiry had prolonged his argument, I would have pointed out the very same thing.

MR. T. KUMARA PILLAI (*Eraniel* cum *Vilavankod*) : ഇങ്ങനെയൊരു പ്രമേയം കൊണ്ടുവന്നതിന്റെ ഉദ്ദേശം ഇവിടെയുള്ള ആശുപത്രികൾ ജനങ്ങൾക്കു കൂടുതൽ പ്രയോജനകരമായിത്തീരണമെന്നും, വൈദ്യസഹായത്തിനു അത്യാവശ്യപ്പെട്ട സ്ഥലങ്ങളിൽ ആശുപത്രികൾ കൊടുക്കണമെന്നുമാണ്. ആ സംഗതികളിൽ ഗവർണ്മെൻറിന്റെ പ്രത്യേകശ്രദ്ധയുണ്ടെന്നുള്ള പക്ഷം ഒരു മെഡിക്കൽ കമ്മിറ്റിയെ ഏർപ്പെടുത്തിയൊ തുമതിയിൽ നിന്നും പണം ചിലവാക്കിനിഷ്കർഷിപ്പെടണമെന്നുള്ള നിർബന്ധം എനിക്കുശേഷം ഇല്ലാത്തതാണ്. എന്നുമാത്രമല്ലാ, എന്റെ മാന്യസ്നേഹിതന്മാരിൽ പലർക്കും ഇങ്ങനെയൊരുമെഡിക്കൽ കമ്മിറ്റി ആവശ്യമില്ലെന്ന അഭിപ്രായമുള്ളതായി ഞാൻ അറിയുന്നതുകൊണ്ടു അതിനെ വോട്ടിനു ഇടണമെന്നു ഞാൻ നിർബന്ധിക്കുന്നില്ല.

The resolution was by leave withdrawn.

Resolution re opening of all roads maintained with public funds to all classes.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): "*This Council recommends to the Government that all roads maintained with public funds be thrown open to all classes of His Highness the Maharaja's subjects without distinction of caste or creed.*"

The principle involved in my resolution has been already discussed.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Is it not covered by the principle of the resolution that has been already discussed by this House?

PRESIDENT: The principle is certainly covered by the other resolution, but the two resolutions are not identical. The other resolution referred to roads round the Vaikam temple and other roads similarly situated. This says that all roads maintained with public funds should

LIBRARY ARCHIVES Kerala Legislative Assembly

be thrown open to all classes of His Highness the Maha Raja's subjects without distinction of caste or creed. They are not identical, though the principle seems to be the same.

MR. M. R. MADHAVA VARIAR (*Chenganmur* cum *Pattanamtitta*): The Government had by a circular accepted the positions that all public roads should be accessible to all classes of persons without distinction of caste or creed. But that circular has been interpreted in such a way as to exclude certain classes of persons from some public roads. The High Court has interpreted that, there are two classes of public roads maintained by the Sirkar—one open to all classes and the other limited to a few. I submit that like every public institution, a road maintained with money received from the people should not be reserved for the use of limited communities. My resolution does not raise any controversial question as Mr. Kumaran's resolution has done. I do not ask this House to decide any question of fact. I do not ask this House to assume the function of a judicial tribunal. I do not ask this House to support *satyagraha* or to throw open this road or that road to any classes. My request to this House is to formulate a policy for the guidance of the Government and of the civil courts in the State. Mr. Krishna Aiyar, during the course of the discussion with respect to Mr. Kumaran's motion, suggested that the circular issued by the Government was only a Huzur notification which did not bind the civil courts and that 5, T. L. R case was decided on the basis of the common law. If there is any apprehension of the kind among the people, it is high time that we remove it as soon as possible. Most of the members of this House who opposed Mr. Kumaran's resolution were suggesting that the aggrieved party must go to the civil court. They are fully aware that under the existing law the courts are likely to give a decree adverse to the claims of the *avarna* Hindus. If the Government will issue a notification on the recommendation of this House that all public roads whether *rajapathas* or *gramaveethies* maintained with public funds should be accessible to all classes, courts will have jurisdiction to recognise the enlightened ideas prevailing at present. With regard to ancient customs, I am of opinion that in case any question arises whether a certain road is public or is maintained with public funds, it must be finally decided by a court of law. If the Government think that a road should be exclusively reserved for certain classes, Government should see that it is not maintained with public funds. In the light of the discussion that took place in connection with Mr. Kumaran's motion, I do not think it necessary to advance any further argument in support of my resolution. I trust that this House will accept this proposition.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know what he means by public funds?

MR. M. R. MADHAVA VARIAR (*Chenganmur* cum *Pattanamtitta*): I mean Government funds.

MR. M. N. PILLAI (*Trivandrum*): I second it.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. P. K. Narayana Pillai.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : The questions are substantially identical. Here also the distinction between *gramaveethi* and public highway holds good. There is Rule 35 (*d*) which says that, if the Council has already decided upon a question which is substantially identical with the motion that is sought to be introduced for discussion subsequently, the latter should not be allowed. I think, Sir, the questions raised in the two resolutions are substantially the same.

PRESIDENT: As I said already, this resolution is not identical *in terms* with that of Mr. Kumaran already discussed and voted upon by this House the other day, namely, the resolution relating to the Vaikom temple and all other roads similarly situated. That resolution turned on the question whether all public roads are open to all classes of people without distinction of caste or creed. I am afraid, the subject matter of the two resolutions is identical and as such, I do not think Mr. Madhava Variar's resolution could be discussed now. I should like to hear the House before I decide the point of order which has already been raised.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is it the desire of the President that we should speak on this resolution or on the point whether this resolution covers the previous resolution also? I did not quite follow.

PRESIDENT: I should like to hear the House on the point raised, whether Mr. Madhava Variar's resolution does not raise a question substantially identical with the one discussed and voted upon by the House the other day at the instance of Mr. Kumaran.

MR. C. SANKARA MENON (*Quilon*): Has it not already been ruled by the President that Mr. Madhava Variar's proposition is not identical with that of Mr. Kumaran and that the House has a right to discuss and decide Mr. Variar's resolution?

PRESIDENT: I did not say that they are identical in all respects. I only said that they are not identical *in terms*. Now, it is pointed out to me that the question raised in this resolution is substantially identical with the one on which the Council has given its decision the other day.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My submission with respect to this motion before the House is that it is not identical with the resolution that was already discussed at the instance of Mr. Kumaran.

PRESIDENT: The question raised by the point of order is whether this resolution is *substantially* identical with the one already decided by the Council.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No doubt, this resolution moved by Mr. Madhava Variar covers not only the resolution moved by Mr. Kumaran but also something beyond that. Therefore this resolution can be withdrawn from discussion in this House only to the extent to which it has already been discussed.

LIBRARY ARCHIVES Kerala Legislative Assembly

PRESIDENT: If as regards that particular question the two resolutions are indentical, then to that extent this resolution has already been discussed and hence would be out of order.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Mr. Kumaran's resolution referred to the road round the Vaikom temple and other roads similarly situated. I say, there may be any number of other roads not so similarly situated and over which all classes are not allowed to walk.

PRESIDENT: The roads may be same; but, is not the same issue raised here?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Mr. Kumaran's resolution dealt with roads round the Vaikam temple and other roads of similar description. Certainly, they are roads maintained out of public funds, and are therefore covered by Mr. Variar's resolution also. Therefore, if any objection can be raised against Mr. Variar's resolution, it can be only to the extent that it has already been covered by Mr. Kumaran's resolution. That is to say, roads round the Vaikam temple and other roads similarly situated could not certainly be discussed under Mr. Variar's general resolution. There may be roads, not similar to those referred to in Mr. Kumaran's resolution, maintained by public funds and at the same time not open to all classes of the general public. For instance, there may be a road near the Museum, which may be a public road maintained by the public funds. If that road is at present not open to all communities, certainly that will be within the scope of the present resolution of Mr. Variar. Therefore, as for the point of order raised, I am submitting, if this resolution is ruled out, it should be only to the extent covered by Mr. Kumaran's resolution. As for the rest, it is open to the House to discuss and decide. I am, therefore, submitting that it cannot be maintained that they are absolutely identical in spirit.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I beg also to point out that the resolution now moved by Mr. Madhava Variar is substantially different from the resolution already discussed by this House, in so far as it relates to the class of roads which may be termed *gramaveethis*. Mr. Kumaran's resolution referred only to a particular class of roads, namely, the roads surrounding the Vaikam temple and other roads similarly situated round temples. Our courts have decided in 5 T. L. R. that there are two sorts of ways in Travancore, namely, the public highways and *gramaveethis*. It does not necessarily follow that these *gramaveethis* should always be surrounding temples or should be approach roads to some temple, like the Vaikam road. Mr. Kumaran's resolution referred only to roads surrounding temples or forming approach roads to temples.

PRESIDENT: That may be so; but, is not the principle involved in the two resolutions the same?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The principle is different; because, as regards the roads referred to in Mr. Kumaran's resolution, the contention was, not merely that they were

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. G. Paramesvaran Pillai.]

not public highways, but also that they were roads which have something to do with temples, which affected the religious sentiments or the religious usages of the people, and also that it formed part of the Devaswom property.

PRESIDENT: That is only about a portion of the road and not about all roads.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): At any rate, the discussion related to such aspects as well; whereas in the case of roads maintained by public funds referred to in Mr. Madhava Variar's resolution, they may be, as I said, *gramaveethis* which have absolutely nothing to do with religious usages or with temples. He only urges now that roads maintained out of public funds should, on that ground, be thrown open to all classes of people irrespective of caste or creed. The substance of Mr. Variar's resolution is that, in spite of the fact that they are *gramaveethis*, some of these roads should be thrown open to all classes of the public on the ground that they are maintained out of public funds.

PRESIDENT: Am I to understand you that, while Mr. Kumaran's resolution dealt with *gramaveethis* against which there are certain religious objections, Mr. Variar's resolution speaks of *gramaveethis* which are subject only to social objections. You say that according to the present resolution these social objections should not prevail.

MR. G. PARAMESVARAN PILLAI (*Neyyattikara*): This resolution has nothing to do with the religious sentiments of the people, but only with the social disabilities.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to contend that the question that is sought to be discussed by the present resolution is identically the same as the one on which the Council has already given its verdict, the question being whether the difference between public highway and common way obtains in Travancore. I pointed out at length that, over and above the fact that the road was a public road, there are other elements going in to distinguish public highway from common way, and that, vested right had already accrued. So, if my friends Mr. P. K. Narayana Pillai and Mr. G. Paramesvaran Pillai exclude the roads round the Vaikam temple and other roads similarly situated and also roads in which vested rights have already accrued, I do not know whether there would be any more roads to be considered by the House in discussing Mr. Madhava Variar's resolution. For instance, I brought to the notice of the house the case reported in 10 T. L. R. and also the Myladi case as cases where, though there was no religious question, vested rights had accrued to particular sections of the people.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): As a matter of personal explanation, I may say that there was not so much about vested rights in the other day's discussion, as about religious

LIBRARY ARCHIVES Kerala Legislative Assembly

usages. The object of Mr. Variar is to see that, even though there may be vested rights such right should be divested by the Council.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Whether the Government can divest such vested rights is a different matter. That apart, the previous discussion, I say, did not turn upon the only question whether there was a religious usage or not. The main question was whether there existed in Travancore a distinction between public highway and common way and whether that distinction should be abolished by the Council. The religious usage was not the only question in issue. That matter was no doubt in prominence. The Council has already decided that the distinction has to be maintained. The question relating to other roads was also being considered the other day. All aspects relating to public roads were discussed that day, and I do not know whether there is anything left for us to consider. If you omit religious usages and vested rights from consideration, I do not know whether there are any roads left which are free from these two objections. The question of finding out fresh roads which are not open to these objections is practically impossible, and it will ultimately amount to a discussion as to whether it is a dead fish or a live fish that weighs more the final result being that the weight is the same in both cases. Therefore what I say is that there is nothing left to be considered. Further, the main point in all the cases is the distinction between the public highway and the common way, and it has been found that, on account of long established custom, on account of religious usages on account of vested rights having accrued to some parties and also on account of the decree by the High Court, a distinction does exist in the country. As I pointed out, in the Myladi case there was no question of religious usage at all. All these matters have already been considered. What is it, I ask, that is left to be considered? So, I maintain that the resolution of Mr. Madhava Variar is substantially identical with that of Mr. Kumaran, and if we discuss and decide this resolution, it will completely nullify the decision that we have already arrived at.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): The decision of the House in respect of the Vaikam roads turned both on the question of vested rights and also of religious usage.

PRESIDENT: Exactly; and both those questions are in issue now.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Both these were requisitioned for the discussion relating to the Vaikam roads. There may be cases in which only the question of vested rights arise.

PRESIDENT: Exactly; therefore, the one question that is now sought to be discussed by Mr. Madhava Variar has already been discussed the other day along with the other question of religious usage also.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Vested rights were not in issue the other day.

PRESIDENT: They need not necessarily have been the question in issue.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. C. Sankara Menon.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I dare say my friend Mr. Paramesvaran Pillai knows that if, for the decision of a case, two issues had been raised and considered, even though one of them might not have been absolutely necessary, the decision would still operate as *res judicata*.

PRESIDENT: What the rule says is that a member shall not raise questions substantially identical with those already discussed and decided by the House. The question of vested rights has already been raised the other day. You are raising it now also. The two resolutions are therefore *substantially* identical.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As I said already, in cases tried in courts, ordinarily, if several issues had been raised and decided, although ultimately it may turn out that some of them might have been avoided, the judgment still operates as *res judicata*.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): May I ask Mr. Subba Aiyar whether any issues are raised in regard to these resolutions?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not say that the House raised definite issues. I believe it is within the knowledge of the members of the House that vested rights, religious usages and ever so many other considerations were brought into prominence in the discussion of Mr. Kumaran's resolution. Whether there is anything left, in this resolution, to be considered by this House, is itself a problematical matter. The main principle involved in this resolution has already been discussed and decided one way. Therefore, I object to the consideration of this resolution.

MR. C. SANKARA MENON (*Quilon*): It appears to me that Mr. Variar's resolution is not identical with that of Mr. Kumaran.

PRESIDENT: Nobody says it is completely identical.

MR. C. SANKARA MENON (*Quilon*): I say, the two resolutions are not even substantially identical. Mr. Kumaran's resolution related to roads round the Vaikam temple and other roads similarly situated, that is to say, roads round temples. That was the point raised by Mr. Kumaran's resolution. The question now rests mainly in construing the wording of the two resolutions. In Mr. Kumaran's resolution, are we to emphasise the word 'Vaikam' or the word 'temple'? If we lay stress on the word 'temple', then the resolution refers not only to roads round the Vaikam temple or other temples under the ownership or management of the Sirkar, but also to all roads round temples owned or managed by private trustees. Therefore, Mr. Kumaran's resolution may cover roads round temples alone. Mr. Madhava Variar's resolution is much more comprehensive, and also different from the other. What he now contends is that all roads opened and maintained by public funds must be thrown open to all

LIBRARY ARCHIVES Kerala Legislative Assembly

classes of people. Mr. Kumaran's resolution is, whether they are maintained by public funds or by private funds, irrespective of that matter, all roads round all temples must be thrown open to all classes of the people. Therefore, in one sense Mr. Variar's resolution may be more restrictive than the other, and in another sense more comprehensive. Mr. Kumaran's resolution goes to the extent of saying that, whether they are maintained out of public funds or of private or Devaswom funds, all roads *which are near temples* should be thrown open for all classes of people. That is entirely different from saying that roads *maintained by public funds* should be thrown open. Taking into consideration the *funds* used for the maintenance of the roads to be thrown open, Mr. Variar's resolution is more restrictive than the other; while, considering the *nature of the roads*, this resolution is more comprehensive than the other.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): May I know from Mr. Sankara Menon, whether, if this resolution is carried by the House, it would not be a reversal of its decision on Mr. Kumaran's resolution?

MR. C. SANKARA MENON (*Quilon*): Not necessarily.

PRESIDENT: You agree in saying that this is more comprehensive. Therefore, if this is passed, it ought to nullify the decision of the House in regard to Mr. Kumaran's resolution.

MR. C. SANKARA MENON (*Quilon*): This resolution deals only with roads maintained with public funds. The roads round the Vaikom temple are not maintained out of public funds. That resolution deals with roads round the Vaikom *temple* and all other roads *similarly* situated. This resolution deals with *all* roads maintained out of public funds.

PRESIDENT: I have already stated that the *terms* of the two resolutions are not identical.

MR. C. SANKARA MENON (*Quilon*): In the case of Mr. Variar's resolution, the important point is the source of the money for maintenance of the roads. That is not the point in Mr. Kumaran's resolution. He only deals with the situation of the roads. Therefore, the two are entirely different. Therefore, whatever might have been the reasons advanced in the course of the discussion of the previous resolution, that does not in any way prevent another resolution, which is not *substantially* the same as the previous one, from being discussed. Arguments might have been advanced either *for* or *against* the resolution. That cannot in any way make the resolutions substantially the same or identical. The President has only to interpret the two resolutions, and in so doing, we have to consider what exactly is the difference between the two. I say, one such difference is that, whereas the *situation* of the roads is the important point in Mr. Kumaran's resolution the *source of funds for maintenance* of the roads, whatever be their situation whether they be near temples or not,—is the point in Mr. Variar's resolution. Therefore, it appears to me that the two

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. K. Parameswaran Pillai.]

resolutions are not *substantially identical*, and therefore, this resolution can be discussed.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): As was already observed, Mr. Kumaran's resolution dealt with only particular roads, *viz.*, roads round the Vaikam temple and other roads similarly situated. Mr. Subba Aiyar said that the question of vested rights has already been discussed and that the House has given its decision in the matter. I say, there is absolutely no question of vested right involved in the matter. It was only the question of custom. The question was whether according to custom the temple roads could be thrown open to all classes. It was entirely a question of custom.

PRESIDENT: May I know the difference between custom and vested right?

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): In the case of vested rights, they can only relate to the rights of particular individuals to make *use* of particular property. There can be no vested right for *excluding* others. It was only a question of custom that was discussed the other day. Vested rights relate always to the rights of people for *exercising* their right over some thing, and never for *excluding* others from doing anything. With respect to this question I submit that the question of the roads relating to the temples has already been discussed. The question relating to roads maintained from public funds such as the streets in Myladi has already been discussed. Apart from those arguments which have been advanced in support of roads relating to temples, there might be other arguments with regard to the opening of roads which may be discussed. I, therefore, think that this resolution may be allowed to be discussed.

PRESIDENT: I have heard the arguments and I have considered the matter. Mr. Sankara Menon was making a mistake. He says that the resolution in order to be ruled out should be identical with the resolution on which a decision has already been taken. What the rule says is that the resolution should not raise a question *substantially* identical with the one on which a decision has been given already. Taking the language of the rule into consideration, it seems to me that the identical questions raised by this resolution were raised, discussed and decided upon in the House in connection with the previous resolution. Therefore, this resolution is substantially identical with that and is not in order. That is my ruling.

We will now pass on to the next resolution.

Resolution re. Statutory Enactment of Service Regulations.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I do not move the resolution standing against my name.

The following resolution was not moved:

"This Council recommends to the Government that the Civil Service Regulations be made statutory."

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